



7020-02

## **INTERNATIONAL TRADE COMMISSION**

**[Investigation No. 337-TA-830 (Enforcement/Modification)]**

**Certain Dimmable Compact Fluorescent Lamps and Products Containing Same;**

### **Commission Decision Finding a Violation of a Consent Order; Issuance of a Civil Penalty Order; Termination of Enforcement Proceeding**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to affirm-in-part and reverse-in-part an enforcement initial determination (“EID”) of the presiding administrative law judge (“ALJ”) in the above-captioned proceeding finding a violation of a consent order. The Commission has issued a civil penalty order against respondent MaxLite, Inc. of Fairfield, New Jersey (“MaxLite”) in the amount of \$10,000.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The

public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted an investigation on February 27, 2012, based on a complaint filed by Andrzej Bobel and Neptun Light, Inc., both of Lake Forest, Illinois (collectively, "Neptun"). 77 FR 11587 (Feb. 27, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337. More specifically, the complaint alleged that the importation into the United States, the sale for importation, and the sale within the United States after importation of certain dimmable compact fluorescent lamps ("CFLs") and products containing the same infringe, *inter alia*, claim 9 of United States Patent No. 5,434,480 ("the '480 patent"). The complaint named numerous respondents, including MaxLite, Inc. of Fairfield, New Jersey ("MaxLite"). On July 25, 2012, the Commission terminated the investigation with respect to MaxLite and entered a consent order preventing MaxLite from importing dimmable CFLs that infringe claim 9 of the '480 patent.

On February 6, 2013, MaxLite petitioned the Commission under Commission Rule 210.76 for modification of the consent order on the basis of certain district court proceedings regarding a covenant not to sue. On February 18, 2013, complainants filed a complaint requesting that the Commission institute a formal enforcement proceeding under Commission Rule 210.75(b) to investigate a violation of the consent order.

On April 12, 2013, the Commission determined to institute consolidated formal

enforcement and modification proceedings to determine whether MaxLite is in violation of the July 25, 2012 consent order issued in the investigation; what, if any, enforcement measures are appropriate; and whether to modify the consent order. 78 *FR* 24233 (Apr. 24, 2013).

On January 10, 2014, the ALJ issued the EID in the combined enforcement and modification proceeding. Prior to the hearing, MaxLite effectively withdrew its request for modification. EID at 52. The ALJ therefore found MaxLite's modification request to be "moot" in view of "the parties' agreed interpretation of the Consent Order." *Id.* The EID in all other respects dealt entirely with Neptun's enforcement complaint. At issue for enforcement of the consent order were two accused types of products: certain CFL bulbs ("CFL bulbs"); and "dimmable CFL Faux Cans" ("Faux Cans").

The ALJ found that the CFL bulbs infringe claim 9 of the '480 patent. The ALJ also found that Neptun had not demonstrated infringement by the Faux Cans.

On January 23, 2014, Neptun filed a petition for review regarding claim construction and noninfringement by the Faux Cans. On January 30, 2014, MaxLite and the Commission investigative attorney ("IA") filed oppositions to Neptun's petition.

On February 26, 2014, the Commission determined to review the enforcement ID. The Commission notice requested briefing on certain patent-related issues and on assessment of the civil penalty. 79 *FR* 12221, 12222 (Mar. 4, 2014).

Having examined the record of this investigation, including the ALJ's final EID, the petitions for review and responses thereto, and the parties' briefing in response to the

Commission notice of review, the Commission has determined to affirm-in-part and reverse-in-part the EID. In particular, the Commission reverses the ALJ's finding that claim 9 has a "bi-directionality" requirement imposed by disavowal in the patent specification. The Commission likewise reverses that portion of the noninfringement determination regarding the Faux Cans predicated on that claim construction. The Commission affirms the ALJ's determination that Neptun failed to demonstrate infringement even absent such a "bi-directionality" requirement. EID at 45-51.

Further, the Commission has made its determination on the issues of remedy and the public interest. The Commission has determined to impose a civil penalty of \$10,000 on MaxLite for violation of the consent order as to the accused CFL bulbs. A Commission opinion is forthcoming.

The Commission has terminated the enforcement proceeding. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

### **ORDER**

On April 12, 2013, the Commission determined to institute consolidated formal enforcement and modification proceedings to determine whether MaxLite, Inc. of Fairfield, New Jersey ("MaxLite") is in violation of the July 25, 2012 consent order issued in the underlying investigation; what, if any, enforcement measures are appropriate; and whether to modify the consent order. 78 *FR* 24233 (Apr. 24, 2013). The matter was delegated to a presiding

administrative law judge (“ALJ”) for issuance of an enforcement ID (“EID”) in the combined enforcement and modification proceeding. On January 10, 2014, the ALJ issued the EID.

Having reviewed the record in this investigation, including the EID and the parties’ written submissions, the Commission has found a violation of the consent order by MaxLite.

The Commission hereby **ORDERS THAT --**

1. Respondent MaxLite shall forfeit and pay to the United States a civil penalty in the amount of \$10,000. MaxLite and its affiliated companies, including but not limited to its parents, subsidiaries, affiliates and related companies, and successors or assigns shall have joint and several liability for the payment of this civil penalty.
2. The Secretary shall:
  - (a) serve copies of this Order and supporting Opinion upon each party of record in this enforcement proceeding; and
  - (b) publish notice of this Order in the *Federal Register*.

By order of the Commission.

Issued: April 10, 2014.

Lisa R. Barton,  
Acting Secretary to the Commission.

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